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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/676,162 | 09/29/2000 | Lee B. Hansen | RA 5311 | 9340 |

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| EXAMINER | |
|---|---|
| LIPMAN, JACOB | |
| **ART UNIT** | **PAPER NUMBER** |
| 2134 | |

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 09/676,162 | HANSEN ET AL. | |
| | Examiner | Art Unit | |
| | Jacob Lipman | 2134 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *13 August 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**2.** Claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**3.** Claim 40 recites the limitation "downs the processors that are indicated as unavailable" in line 2. Downing the number of unavailable processors is equal to upping the number of available processors, as in claim 38. Claim 36 does not mention a table identifying which processors are unavailable, but identifying which are available. Because of this, it is unclear as to if this is a typo, and it renders the claim confusing and indefinite. The claim should indicate either upping or downing the number of available processors.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-9, 16-26, and 33-40, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Campbell et al., US Patent number 5,365,587.

With regard to claims 1, 6, 17 and 18 Campbell discloses a method for increasing performance of a data processing system (column 2 lines 37-41) including providing a first key allowing an initial performance level (column 2 lines 41-52), and providing a second key that increases the level (column 2 lines 52-56) when needed (column 2 lines 31-36).

With regard to claims 2-5, Campbell discloses the second key has an expiration date (one time enabled, column 2 lines 56-62).

With regard to claim 7, Campbell discloses the key is verified (column 2 lines 52-56).

With regard to claims 8 and 9, Campbell discloses the key is specifies a system serial number (column 8 lines 58-60).

With regard to claim 16, Campbell discloses that the system can be in use when updated (updated via keyboard, column 10 lines 4-8)

With regard to claims 19-22, Campbell discloses the performance level of each processor is maintained in a database (column 8 line 56-column 9 line 2).

With regard to claim 23, Campbell discloses the key is encrypted (column 11 lines 13-21).

With regard to claims 24-26, and 33-40, Campbell discloses the performance increase could be controlled by increasing the number of active processors (column 6 lines 39-53), and that a list of what is enabled is kept (column 7 lines 37-44) and updated (column 9 lines 54-65).

6. Claims 1-23, as best understood, are rejected under 35 U.S.C. 102(a) as being anticipated by Fenstemaker et al., US Patent number 5,365,587.

With regard to claims 1, 6, 17 and 18, Fenstemaker discloses a method for increasing performance of a data processing system (column 1 lines 45-50) including providing a first key allowing an initial performance level (column 1 lines 37-41), and providing a second key that increases the level (column 1 lines 41-43) when needed.

With regard to claims 2-5, Fenstemaker discloses the second key has an expiration date (column 4 lines 17-26).

With regard to claims 7 and 10-15, Fenstemaker discloses the key is verified (column 3 lines 17-23).

With regard to claims 8 and 9, Fenstemaker discloses the key is verified against a system serial number (column 4 lines 45-48).

With regard to claim 16, Fenstemaker discloses that the system can be in use when updated (column 1 lines 47-50).

With regard to claims 19-22, Fenstemaker discloses the performance level of each processor is maintained in a database (column 4 line 61-67).

With regard to claim 23, Fenstemaker discloses the key is encrypted (column 5 lines 1-5).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 24-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell in view of Fenstemaker.

With regard to claims 24-26 and 33-40, Fenstemaker discloses a method to increase the performance of a processing system as outlined above, but does not mention controlling the number of active processors. Campbell discloses a method to increase the performance of a processing system by controlling the number of active processors as outlined above. It would have been obvious for one of ordinary skill in the art to increase the number of processors in Fenstemaker's system to allow for further profitability and control.

9. Claims 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fenstemaker in view of Campbell.

With regard to claims 27-32 Campbell discloses a method to increase the performance of a processing system as outlined above, but does not mention explicitly verifying an expiration date to see if it had passed. Campbell does disclose that the key can be good for a one-time use, as outlined above. Fenstemaker discloses a method to increase the performance of a processing system, including verifying an expiration date to see if it had passed as outlined above. It would have been obvious for one of ordinary skill in the art to verify an expiration date in the key in Campbell's system, in order to control the one-time use.

***Response to Arguments***

10. Applicant's arguments filed 8/13/2004 have been fully considered but they are not persuasive.

Applicants amended the claims to add the phrase "before a next time the data processing system is powered up". This phrase does not add any limitation to the claims. Anything done on a computer is done before the next time it is powered up, as long as it will be powered up at any point in the future. The claims fail to claim that the computer is either in a powered down state, that the changes will take place when the computer is next powered up, or that the changes will remain at the next power up.

Applicant argues that Campbell does not disclose the providing and increasing steps while the processing system is in use, which, applicant continues, cannot be during power up. The examiner disagrees. A system is "in use" during power up. In addition an "operating system" performs all software functional changes.

Applicant argues that increasing the functionality of a data processing system does not increase the performance level of a data processing system because it does not increase the magnitude of a quantity, for example, processing speed. The examiner points out that there is a quantity of functionality, and adding functionality increases the performance level. Had the claims specified increasing the processing performance level, the examiner would agree, but "the performance level of a processing system" is not limited to the processing performance level.

Applicant, on page 17 of the arguments, adds that adding this functionality "may decrease the performance level of the data processing system, as more processing

resources may be require". Which is motivation to combine Fenstemaker and Campbell, as the examiner suggested in the prior office action.

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob Lipman whose telephone number is 571-272-3738. The examiner can normally be reached on 7:00 - 4:00 (M-Th).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse can be reached on 571-272-3838. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JL

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